IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1839 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KALIBEN RAGHJIBHAI PATNI & 3 - Defendant(s)

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Appearance :
MR SN SHELAT for Appellant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/04/2006

ORAL JUDGMENT

1.This appeal is filed by the appellant – original opponent No.2 – Gujarat State Road Transport Corporation under sec.173 of the Motor Vehicles Act, 1988 challenging the judgment and Award passed by the Motor Accident Claims Tribunal (Main), Mehsana in Motor Accident Claims Petition No.778 of 1984 dtd.24/10/1990.

2.The respondent No.1 herein – original claimant sustained injury in the vehicular accident which took place between ST Bus bearing registration No.GRT-6935 and Jeep bearing registration NO.GRW-9606 which occurred on 14/3/1984 at about 10.30 hrs, on Patan Chanasma

Road. The driver of the Jeep also lost his life in the said vehicular accident. The respondent No.1 herein – original claimant was one of the passengers in the Jeep. He preferred Motor Accident Claim petition No.152 of 1984 before the learned Motor Accident Claims Tribunal (Main), Mehsana claiming compensation of Rs.70,000.00 and the learned Tribunal by its impugned judgment and award awarded Rs.27,500.00 towards the pain, shock and suffering, future loss of income, loss of income, medical expenses etc. Being aggrieved and dissatisfied with the said judgment judgment and award passed by the learned Motor Accident Claims Tribunal (Main), Mehsana in Motor Accident Claims Petition No.778 of 1984 dtd.24/10/1990, the appellant – original opponent No.2 has preferred the present First Appeal.

3.The main contention raised and the only

submission made on behalf of the appellant to assail the impugned judgment and award passed by the Motor Accident Claims Tribunal is on the point of negligence on the ground of contributory negligence on the part of the driver of the Jeep. It is submitted that the tribunal has materially erred in not relying upon the version and/or the statement of driver of the ST Bus and has materially erred in not holding the driver of the Jeep as negligent in driving the Jeep, due to which the accident has taken place and therefore, it is requested to allow the present appeal.

4.On the other hand, it is submitted on behalf of the respondent – original claimant that in the facts and circumstances of the case and looking to the documentary evidence and on appreciation of evidence, the tribunal has not held the driver of the Jeep as negligent and has held the driver of the ST Bus solely responsible and

negligent for the accident in question and therefore, it is required to dismiss the present appeal.

5.Heard the learned advocates appearing on behalf of the parties and perused the the documentary as well as oral evidence submitted by the parties on record. I have gone through the finding recorded by the Tribunal more particularly, para 10 of the impugned judgment and award dealing with the negligence aspect on the part of the drivers of the ST Bus and Jeep. Considering the evidence at Ex.55 and considering the fact that the Bus was driven on a single track road and it being a heavy vehicle, it was the duty of the driver of the ST Bus to take more care and that the theory of the ST Bus driver that the bus was stationary, has been disbelieved by the Tribunal and accordingly, the Tribunal on appreciation of evidence has come to the conclusion and

recorded finding that the driver of the ST Bus was solely negligent in driving the Bus, as a result of which, the vehicular accident in question has taken place. On going through the entire evidence on record, the aforesaid finding is not required to be interfered with by this Court. The learned Tribunal was justified in holding the driver of the ST Bus as sole negligent for the accident in question. Even otherwise also, it is required to be noted that this appeal is of 1992 and in fact the accident has taken place in the year 1984. Except the aforesaid, no other submissions have been made on behalf of the appellant.

6.For the reasons stated hereinabove, the petition fails and the same deserves to be dismissed and is accordingly dismissed. However, there will be no order as to costs.

rafik (M.R.SHAH,J.)